



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Marc E. Elias, Esq. .
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

MAR 24 2009

RE: MUR 6031
Hagan Senate Committee, Inc.
Nancy M. Bremmer, Treasurer

Dear Mr. Elias:

On July 1, 2008, the Federal Election Commission notified your clients, Hagan Senate Committee, Inc. ("Committee") and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

Upon further review of the allegations contained in the complaint, and the information provided by your clients, the Commission, on March 10, 2009 voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

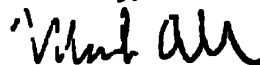
Based on the information before the Commission, it appears that the Committee failed to timely disclose by 48 hour notice contributions of \$1,000 or more in violation of 2 U.S.C. § 434(a). The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

MUR 6031
Marc E. Elias, Esq.
Page 2

If you have any questions, please contact please contact Shana Broussard, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Hagan Senate Committee, Inc. **MUR: 6031**
4 and Nancy M. Bremmer, in her
5 official capacity as treasurer
6

7 **I. BACKGROUND**
8

9 This matter originated with a complaint filed by the North Carolina Republican
10 Party through its Executive Director Chris McClure with the Commission alleging that
11 Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as
12 treasurer,¹ (the "Committee") violated the Federal Election Campaign Act of 1971, as
13 amended, ("the Act") when it received and improperly disclosed 97 excessive
14 contributions totaling \$184,531.31 in its 2007 Year End Report and 2008 Pre-Primary
15 Report.² See 2 U.S.C. § 437g(a)(1). In addition, Complainant alleges that the Committee
16 failed to timely disclose five contributions of \$1,000 or more subject to 48-hour reporting
17 and failed to fully disclose required contributor information for over 370 contributions in
18 its Year End and Pre-Primary Reports. In its response, the Committee asserts that it did
19 not receive excessive contributions and offered information to support the presumptive
20 reattribution and redesignation of most of the disputed contributions. The Committee
21 acknowledged untimely disclosing three contributions subject to 48-hour reporting and
22 provided information assertedly showing that it used "best efforts" to comply with the
23 disclosure requirements of the Act.

¹ Linda S. Cary was the treasurer of the Committee at the time of the activity at issue. Nancy M. Bremmer became treasurer of the Committee on August 25, 2008.

² The complaint references 97 excessive contributions but provides specific information as to 94 contributions.

After a review of the available information, the Commission exercised its prosecutorial discretion to dismiss the allegation that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f), by accepting excessive contributions, and 2 U.S.C. § 434(b) by failing to disclose identifying information for contributors. The Commission dismissed with caution the allegation that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(a) by failing to timely disclose contributions by 48-hour reporting.

II. FACTUAL AND LEGAL ANALYSIS

A. Disclosure of Contributor Information and the Committee's Best Efforts

The Act requires candidate committees to identify persons who make contributions that when aggregated exceed \$200 for the election cycle. 2 U.S.C. § 434(b)(3)(A). The Act and Commission regulations define "identification" to include the individuals name, address, occupation, and name of employer. 2 U.S.C. §§ 431(13), 434(b)(3)(A); 11 C.F.R. §§ 100.12, 104.8. If the committee does not disclose this information, the committee shall be considered in compliance with the Act if it submits evidence that "best efforts" have been used to "obtain, maintain, and submit this information." 11 C.F.R. § 104.7(a). In its answer to the complaint, the Committee asserts a "best efforts" defense, maintaining that it complied with all of the requirements of 11 C.F.R. § 104.7(b) to attempt to obtain identifying information, including contacting the contributor within 30 days of receipt of the contribution and reviewing previous contributor information. In order to demonstrate "best efforts," written solicitations for contributions must include a clear request for the required

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1 contributor information. 11 C.F.R. § 104.7(b). In addition, the solicitation must include
2 an accurate statement of Federal law regarding the collection and reporting of individual
3 contributor identification. *Id.* In the event the contributor does not provide this
4 information, the committee treasurer must make at least one effort to obtain the
5 information no later than 30 days after the receipt of the contribution.
6 11 C.F.R. § 104.7(b)(2).. The request may not include new material on any other subject
7 and cannot include an additional solicitation. *Id.* The request must clearly ask for the
8 missing information; and if in writing, it must be accompanied by a pre-addressed return
9 post card or envelope. *Id.*

10 The Committee is the principal campaign committee for Kay Hagan, a candidate
11 for the U.S. Senate from North Carolina in the 2008 election. The first report filed by the
12 Committee was the 2007 Year End filed on January 31, 2008. In that report, the
13 Committee disclosed 468 individual contributions on Schedule A, but failed to provide
14 complete contributor information for 169, or 36%, of the contributions. In the next report
15 filed, the 2008 Pre-Primary Report, the Committee disclosed 1150 contributions from
16 individuals on Schedule A, but failed to provide complete contributor information for
17 219, or 19%, of the contributions.

18 The Commission's Reports Analysis Division ("RAD") sent the Committee a
19 request for additional information ("RFAI") for the 2007 Year End Report requesting that
20 the Committee update the incomplete contributor information on the report and/or
21 provide a detailed description of its "best efforts" to obtain the information. *See*
22 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.7(b). The Committee timely responded and on
23 May 2, 2008, the Committee filed an amended 2007 Year End Report updating the

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1 identification information for 19 contributors, thus reducing the incomplete contributor
2 information for the 2007 Year End Report to 150, or 32%, of the contributions.

3 The Committee's 2008 July Quarterly Report, filed after the complaint, disclosed
4 1688 individual contributions. The Commission's preliminary review determined that
5 the Committee did not disclose contributor information or demonstrate "best efforts" for
6 19 of those entries, or 1% of the total individual contributions.

7 In response to the complaint, the Committee maintains that it complied with the
8 requirements of 11 C.F.R. § 104.7(b) in attempting to obtain the required contributor
9 information. In support of its assertion, the Committee provided partial records to
10 support its actions, including copies of three different types of donor cards which requests
11 all identifying information required by the Act. Two of the cards included the
12 recommended language of 11 C.F.R. § 104.7(b)(1) informing contributors that Federal
13 law requires "best efforts" to collect the identifying information for contributions
14 exceeding \$200 in an election cycle. The Committee provided sample follow-up letters
15 sent to contributors and phone logs. The letter requested the missing information and
16 informed the contributor that Federal law requires the Committee to obtain the
17 information.

18 Although the Committee has not disclosed employer and occupation information
19 for some contributors the Committee's response to the complaint indicates that it is
20 taking actions consistent with the "best efforts" safe harbor, such as requesting
21 contributor identification information in its solicitation materials, sending a thank you
22 letter that includes a follow-up request for missing contributor identification within the
23 appropriate time frame, and, when necessary, contacting contributors by telephone while

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maintaining phone logs. In addition, the Committee's improved efforts are visible in the decline in its failure rate in the Year End Report (36%), the Pre-Primary (19%) and the July Quarterly (1%). Accordingly, the Commission has decided to dismiss the allegation that the Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose identifying information for contributors.

B. Alleged Excessive Contributions

The Act prohibits any person from making or knowingly accepting contributions in excess of the Act's contributions limits. See 2 U.S.C. §§ 441a(a) and 441a(f). The individual contribution limit on giving to candidate committees is \$2,300 per election. 2 U.S.C. § 441a(a)(1)(A). Upon receipt of an excessive contribution, a committee must remedy the violation by refunding the excessive amount or seeking redesignation or reattribution within 60 days. 11 C.F.R. § 110.1(b)(5)(ii) and (k)(3). The Commission's regulations allow a committee to presumptively redesignate an excessive portion of a contribution to the general election provided the contribution is made before the general election, is not designated to another person, and does not result in the contributor exceeding the contribution limit. 11 C.F.R. § 110.1(b)(5)(ii)(B)(1)-(4). The contributor can reattribute a contribution, or the committee can do so presumptively. The contributor can instruct a committee in writing to attribute an excessive portion of a joint contribution to another individual. 11 C.F.R. § 110.1(k)(3)(i). The committee can make a presumptive reattribution of an excessive contribution in the name of the other individual listed on the check provided this does not cause the individual to exceed the contribution limits. 11 C.F.R. § 110.1(k)(3)(ii)(B)(1). Commission regulations also state that a

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1 committee treasurer must notify a contributor of the redesignation or reattribution within
2 60 days of the receipt of the contribution and must offer the option of a refund. 11 C.F.R.
3 § 110.1(k)(3)(ii)(B)(2), (3).

4 The complaint alleged the Committee accepted and improperly disclosed
5 excessive contributions totaling \$184,531.31. The complaint based this allegation on the
6 Committee's disclosure of individual contributors giving \$2,300 for the primary and
7 \$2,300 for the general elections, assuming it unlikely that all of these contributions were
8 received in the form of separate \$2,300 checks. The complaint concluded that the
9 Committee had not properly redesignated or reattributed contributions made in the form
10 of single checks. In response to the complaint, the Committee asserts that it complied
11 with the requirements of 11 C.F.R. § 110.1 to properly designate individual contributions
12 received for the primary and general elections. To demonstrate its compliance, the
13 Committee outlined its internal review process for the subject reports. According to the
14 Committee, the contributions disclosed in the Reports were handled by three means: the
15 contribution was originally designated by the contributor, contributing spouses made
16 donations by separate checks, or the contribution was presumptively reattributed or
17 redesignated per the Commission's regulations. Response at 2. The Committee provided
18 samples of contributor cards distributed at campaign events wherein the contributor
19 signed and allocated the funds between the primary and general election. In addition, the
20 Committee provided copies of contributions made by spouses through separate checks.
21 In further support, the Committee also attached to its response examples of its contributor
22 cards, phone logs, and letters to contributors to advise that their contribution was
23 presumptively reattributed or redesignated and offering to refund the excessive amount.

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1 The Committee acknowledges that it does not possess documentation to support
2 the presumptive reattribution or redesignation for 15 of the 94 allegedly excessive
3 contributions itemized in the complaint. The aggregate value of these contributions is
4 \$30,800. The Committee maintains that its behavior conformed to the regulations and
5 that these few instances were the result of contributions for which an oral confirmation of
6 the reattribution/redesignation was obtained without a follow-up letter or a copy of the
7 letter could not be located. Response at 2.

8 In view of the speculative nature of the allegation that the Committee accepted
9 and misreported excessive contributions and the Committee's response indicating that
10 most of the contributions were properly redesignated and reattributed as necessary, the
11 Commission has decided to dismiss the allegation that Hagan Senate Committee, Inc. and
12 Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f) by
13 accepting excessive contributions.

14 **C. 48-Hour Notices**

15 The Act requires principal campaign committees of candidates to notify in writing
16 either the Secretary of Senate, the Commission, or Secretary of State, as appropriate, of
17 each contribution of \$1,000 or more is received by any authorized committee of the
18 candidate after the 20th day, but more than 48 hours, before the day of the election.
19 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48
20 hours after the receipt of the contribution and to include the name of the candidate and
21 office sought by the candidate, the identification of the contributor, and the date of receipt
22 and amount of the contribution. *Id.*

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1 The complaint alleged that the Committee did not timely disclose by 48 hour
2 notice five contributions totaling \$6,000 during April 2008. One \$1,000 contribution
3 received on April 17 (Thursday) and one \$1,000 contribution and one \$2,000 contribution
4 received on April 18 (Friday) should have been reported April 19 (Saturday) and April 20
5 (Sunday), respectively. Instead, they were reported on April 21 (Monday). The
6 Committee acknowledged that these contributions were untimely reported.
7 Response at 3. Respondents mistakenly concluded that if a due date fell on a weekend,
8 the report was due on the next business day. *Id.*

9 By contrast, the Committee maintains that two other \$1,000 contributions
10 identified in the complaint were timely reported by 48-hour notice on April 27, 2008.
11 The Committee asserts that although it disclosed April 24 as the date of receipt, these
12 contributions were received by a joint fundraising committee on April 24 but not
13 distributed to the Committee until April 25. Although the Committee did not disclose
14 these two contributions by 48-hour notice within two days of receipt, the Committee did
15 report its share of the net proceeds received as a transfer-in from the fundraising
16 representative. The transfers were appropriately noted on the July Quarterly Report as a
17 Memo Schedule A to FEC Form 3. *See* 11 C.F.R. § 102.17(c)(8)(i)(B).

18 In view of the *de minimis* amount in violation here—\$4,000—and the fact that the
19 48-hour notices were filed within two days of the required date and well before the May
20 6, 2008 primary, the Commission has decided to dismiss with caution the allegation that
21 Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as
22 treasurer, violated 2 U.S.C. § 434(a) by failing to file timely 48-hour notices.

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